

# HOUSE BILL NO. 4326

March 12, 2019, Introduced by Reps. Cynthia Johnson, Whitsett, Brenda Carter, Peterson, Yancey, Byrd, Hope, Neeley, Haadsma, Tyrone Carter, Rabhi, Shannon, Cambensy, LaGrand, Love and Robinson and referred to the Committee on Commerce and Tourism.

A bill to prohibit certain inquiries and requests for disclosures during the hiring process; to provide for the powers and duties of certain state officers and entities; to provide for the promulgation of rules; to make appropriations for the implementation of this act; and to prescribe civil sanctions.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the "job  
2 applicant criminal history act".

3           Sec. 3. As used in this act:



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1 (a) "Applicant" means an individual considered or who requests  
2 to be considered for employment by an employer.

3 (b) "Arrest" means being apprehended, detained, taken into  
4 custody, held for investigation, or restrained by a law enforcement  
5 agency or law enforcement officer based on a criminal accusation or  
6 suspicion that the individual committed a crime.

7 (c) "Conditional offer of employment" means an offer of  
8 employment that is conditional only on 1 or more of the following:

9 (i) The result of the employer's subsequent inquiry into the  
10 applicant's criminal record.

11 (ii) Any other employment-related contingency expressly  
12 communicated to the applicant at the time of the offer.

13 (d) "Criminal accusation" means an accusation made by a law  
14 enforcement agency, prosecuting attorney, or attorney general  
15 through an indictment, information, complaint, or other formal  
16 charge that an individual has committed a crime.

17 (e) "Criminal conviction" means a judgment entered by a court  
18 upon a plea of guilty, guilty but mentally ill, or nolo contendere,  
19 or upon a jury verdict or court finding that a defendant is guilty  
20 or guilty but mentally ill.

21 (f) "Department" means the department of civil rights.

22 (g) "Employer" means a person, this state, or a political  
23 subdivision of this state that employs 1 or more employees in this  
24 state. Employer includes, but is not limited to, the following:

25 (i) An agent of an employer.

26 (ii) A person regularly undertaking with compensation to  
27 procure employees for an employer or to procure for individuals  
28 opportunities to work for an employer.

29 (iii) A person that enters into a contract with this state or a



1 political subdivision of this state to provide goods or services.

2 (h) "Employment" means any of the following:

3 (i) An occupation, vocation, job, or work for pay, including,  
4 but not limited to, temporary or seasonal work, contracted work,  
5 contingent work, and work through the services of a temporary or  
6 other employment agency.

7 (ii) Vocational or educational training with or without pay.

8 (i) "Inquiry" or "inquire" means conduct intended to gather  
9 information from or about an applicant using any method, including  
10 application forms, interviews, and criminal history checks.

11 (j) "Interview" means direct contact by an employer with an  
12 applicant, whether in person or by telephone, to discuss the  
13 employment being sought or the applicant's qualifications.

14 Sec. 5. (1) An employer shall not inquire about or require an  
15 applicant to disclose any of the following:

16 (a) An arrest of the applicant.

17 (b) A criminal accusation made against the applicant, if the  
18 criminal accusation is not then pending or did not result in a  
19 criminal conviction.

20 (c) Before making a conditional offer of employment, a  
21 criminal conviction of the applicant.

22 (2) Subsection (1) does not apply to any of the following:

23 (a) Inquiries that are necessary to enable the employer to  
24 comply with state or federal law.

25 (b) Employment designated by the employer as part of a state  
26 or federal program or obligation that is designed to encourage the  
27 employment of individuals with criminal histories.

28 (c) An employer that provides programs, services, or direct  
29 care to minors or vulnerable adults.



1 (3) After an employer has made a conditional offer of  
2 employment to an applicant, the employer may revoke the conditional  
3 offer of employment or take an adverse action against the applicant  
4 based on the results of an inquiry into the applicant's criminal  
5 record. The employer's revocation of the conditional offer must be  
6 reasonable based on all the following factors:

7 (a) The specific duties and responsibilities related to the  
8 employment sought or held by the applicant.

9 (b) The effect that the criminal offense for which the  
10 applicant was criminally convicted has on the applicant's fitness  
11 for the employment sought or ability to perform the specific duties  
12 or responsibilities described in subdivision (a).

13 (c) The amount of time that has elapsed since the occurrence  
14 of the criminal offense.

15 (d) The age of the applicant at the time of the occurrence of  
16 the criminal offense.

17 (e) The frequency and seriousness of the criminal offense.

18 (f) Any information produced by the applicant, or produced on  
19 the applicant's behalf, regarding the applicant's rehabilitation  
20 and good conduct since the occurrence of the criminal offense.

21 (4) Within 15 days after revoking a conditional offer of  
22 employment under subsection (3), an employer shall provide the  
23 applicant with a copy of any records obtained by the employer in  
24 consideration of the applicant for employment, including, but not  
25 limited to, criminal records.

26 Sec. 7. (1) An individual aggrieved by a violation of this act  
27 may do either of the following:

28 (a) File a complaint with the department.

29 (b) Bring a civil action for appropriate injunctive relief or



1 damages, or both, in the circuit court for the county where the  
2 alleged violation occurred or where the person against whom the  
3 civil complaint is filed resides or has his or her principal place  
4 of business. In addition to any other remedies provided for under  
5 this section, the court may award damages for injury or loss caused  
6 by each violation of this act and all or a portion of the costs of  
7 litigation, including reasonable attorney fees and witness fees, to  
8 the complainant in the action. Filing a complaint with the  
9 department under subdivision (a) is not a prerequisite or a bar to  
10 bringing an action under this subdivision.

11 (2) The department shall investigate a complaint submitted  
12 under subsection (1)(a), determine whether a violation of this act  
13 occurred, and notify the complainant and alleged violator of the  
14 determination. If the department determines that an employer has  
15 repeatedly violated this act, the department shall issue an order  
16 to cease and desist to the employer.

17 (3) An employer that violates this act may be ordered to pay a  
18 civil fine as follows:

19 (a) For employers that employ 10 or fewer employees, a civil  
20 fine of not more than \$500.00.

21 (b) For employers that employ 11 or more but 99 or fewer  
22 employees, a civil fine of not more than \$1,000.00.

23 (c) For employers that employ 100 or more employees, a civil  
24 fine of not more than \$1,500.00.

25 (4) Fifty percent of a civil fine recovered under this act  
26 must be remitted to the complainant who filed the complaint that  
27 resulted in the recovery of the civil fine.

28 Sec. 11. (1) The department shall maintain all of the  
29 following data regarding this act:



1 (a) The number of complaints filed.

2 (b) Demographic information about the complainants.

3 (c) The number of investigations conducted by the department.

4 (d) The disposition of every complaint and investigation.

5 (2) By March 31 of each year, beginning in 2020, the  
6 department shall provide a written report regarding the information  
7 described in subsection (1) to the chairpersons of the standing  
8 committees and the appropriations subcommittees of the house of  
9 representatives and senate having jurisdiction over legislation  
10 pertaining to employment discrimination. The report must comply  
11 with all of the following:

12 (a) Be in a form that does not identify a complainant or  
13 employer.

14 (b) Include, based on the information in subsection (1) and  
15 any other information obtained by the department, a description of  
16 the effect that this act has had on the hiring of applicants with  
17 criminal histories by employers and on employers.

18 Sec. 13. The department may promulgate rules to implement this  
19 act pursuant to the administrative procedures act of 1969, 1969 PA  
20 306, MCL 24.201 to 24.328.

21 Sec. 14. For fiscal year 2019-2020, \$100,000.00 is  
22 appropriated to the department to implement this act.

